

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GARY MILLER,

Plaintiff,

- against -

WHIP NETWORKS, INC.

Defendant.

Docket No. 1:17-cv-8335

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Gary Miller (“Miller” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Whip Networks, Inc., (“Whip” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of an iconic copyrighted photograph of American rapper and actor Tupac Shakur after he was shot in Times Square, owned and registered by Miller, a New York based professional photographer. Accordingly, Miller seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Miller is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 137-02 224th Street, Laurelton, New York 11413.

6. Upon information and belief, Whip is a domestic corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 1841 Centinela Avenue, Santa Monica, California 90404. At all times material, hereto, Whip has owned and operated a website at the URL: www.RealCoolNationa.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Miller photographed American rapper and actor Tupac Shakur after he was shot in Times Square, owned and registered by Miller (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Miller is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

10. The Photograph is registered with the United States Copyright Office and given registration number VA 1-233-155.

B. Defendant’s Infringing Activities

11. Whip ran an article on the Website entitled *Tupac’s Getting Dragged! DJ Funkmaster Flex Claims Tupac Shot Himself During the 1994 Quad Recording Studio Incident*.

See <http://realcoolnation.com/tupacs-getting-dragged-dj-funkmaster-flex-claims-tupac-shot-1994-quad-recording-studio-incident/8/>. The article prominently featured the Photograph. A true and correct copy of the article and a screen shot of the Photograph of the article are attached hereto as Exhibit B.

12. Whip did not license the Photograph from Plaintiff for its article, nor did Whip have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST WHIP)
(17 U.S.C. §§ 106, 501)

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

15. Whip infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Whip is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the foregoing acts of infringement by Whip have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

18. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

19. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

20. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Whip be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
October 29, 2017

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